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CONCORD, N.H.

Kenneth L. Cowan, Director
Division of Inheritance Taxes
State Tax Commission
Concord, New Hampshire

Dear Sir:

Some time ago you referred to the case of Caskey v. State, 93 N.H. 438, and to RSA 86:40, and you requested our opinion on the question whether, in computing taxes on estates in which securities had been sold in order to pay the expenses of administration, debts, taxes and pecuniary legacies, allowance should be granted on account of losses below inventory value on the sale of such securities. You adverted to the following language contained in the statute cited:

"Said tax shall be assessed upon the actual market value of the property at the time of the decedent's death, and gains or losses on sales made afterward for any purpose shall be disregarded, except as evidence of true value at time of death." (Emphasis added).

The underscored language, you point out, was added by the Legislature in 1945 during the pendency of the Caskey case in the Supreme Court. The Court referred to the newly added language in the following passage:

"The 1945 act referred to by the State has no application to the present case, it being passed after the proceedings before us were begun." (93 N.H. at 443).

It is difficult to delineate with certainty the precise meaning of the rather extensive remarks of the Court in the case under discussion; but we feel confident that the decision therein does not undertake to suggest a constitutional limitation upon the issue there considered. However, the meaning of the 1945 amendment is eminently clear.

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It requires that takers in an estate are bound by the valuation of the property at the time of death, if such valuation was accurate as of that time. The fact that a lower price than the inventory value may be received upon sale is pertinent only as suggesting the possibility that the inventory valuation was in error; in which case an amended inventory may be appropriate.

It is recognized that the effect of the statute is to bear heavily upon takers in kind and residuary takers. It is also apparent that difficulty will be encountered in prorating the tax among takers of varying interests. These matters do not, however, relate to the meaning of the language under consideration.

I might add that the views expressed herein are in obedience to a policy of resolving doubtful matters in favor of taxability at the level most beneficial to the State. Litigation may show that the Legislature was ineffectual in attempting to overcome the problems presented by Caskey; but such litigation can only be expected to come about if the State taxes in accordance with the language contained in the statute.

We feel confident, however, that in the event of litigation an exceedingly strong case may be made to support the State's views.

Very truly yours,

Warren E. Waters
Deputy Attorney General